

**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 541**  
**Case No. 87-17M/83-13C**  
**(PUD Modification @ McLean Gardens)**  
**August 3, 1987**

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on June 22, 1987. At that hearing session, the Zoning Commission considered the application of VMG Associates, pursuant to Sections 2404.12 and 2407.9 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of Section 3022 of that title.

**FINDINGS OF FACT**

1. The application, which was filed on March 18, 1987, requested a modification to Zoning Commission Order No. 421 dated February 13, 1984 for Z.C. Order No. 83-13C.
2. Z. C. Order No. 421 granted approval of a consolidated Planned Unit Development (PUD) and related map amendment from R-5-A to R-5-B and C-2-B for Lot 4 (formerly known as Lots 1, 2 and 3) in Square 1819, and from R-5-A to R-5-B and C-2-A for Lot 8 (formerly known as Lots 1, 2, 5, 6 and 7) in Square 1821.
3. The PUD Covenant in connection with Z.C. Order No. 421 was recorded at the land records office of the District of Columbia on June 7, 1984 as Instrument No. 10994. The construction of the project has proceeded in accordance with the plans and rezoning approved by the Zoning Commission under Z.C. Order No. 421. The approved rezoning to R-5-B, C-2-A and C-2-B for the site is in effect.
4. The approval was for the construction of a mixed-use development with a maximum floor area ratio (FAR) of 1.29 and a maximum lot occupancy of 28 percent, including a five-story office building with a maximum commercial area of 30,875 square feet, a nine-story residential building with 243 housing units and a maximum retail and service space of 17,428 square feet, and 643 accessory parking spaces including 190 underground parking spaces.

5. The applicant has received building permits in connection with all facets of the development approved in the PUD order, and the first phase, which consists of four-story buildings containing a total of 360 apartments, has been completed.
6. The subject application proposes to modify Z.C. Order No. 421 by the elimination of a screen wall, the use of the parking spaces on the south site, (Square 1819) and the number of trash receptacles to be located on both the south site and the north site (Square 1821) to achieve a more aesthetically pleasing and functional development.
7. The applicant requested that the Commission incorporate the record of Case No. 83-13C (Village at McLean Gardens PUD) into the record of the subject case including, but not limited to, various public reports and studies, drawings and other evidence that would also apply to this case. In the record of Case 83-13C all of the material required for a second stage PUD application was contained in Exhibit Nos. 4, 27, 49, 55, 56, 57 and 72 of that record.
8. As a result of the previous approval by the Zoning Commission for planned unit development of this site, a number of issues have already been decided and remain unchanged by the requested modification. The appropriateness of this site for a Planned Unit Development with a change in zoning, its compatibility with the surrounding neighborhood, and the public benefits that it will provide are all issues which have been previously decided by the Commission.
9. The applicant proposes three modifications to the approved PUD in the subject application. The first proposed modification is the elimination of a screen wall connecting Stair No. 1 and the cooling-elevator tower, which was approved as part of the penthouse design for the 9-story residential building in Square 1819.
  - a. The applicant's original modification request included a reduction in the size of the penthouse for the proposed 9-story residential building in addition to the screen wall modification request. The applicant amended its proposed roof structure modification at the hearing, withdrawing its request for a reduction in the height of part of the penthouse structure. The revision of the applicant's proposal resulted from the

progress on the construction of the residential structure which had reached a stage where it was necessary to begin construction of the penthouse. Because an immediate field decision was required regarding the constructed height of the penthouse, and the hearing before the Zoning Commission had not yet been conducted, the applicant proceeded to build the penthouse in accordance with the plans previously approved by the Zoning Commission.

- b. The proposed elimination of the screen wall would make the project more appealing from surrounding properties as the roof structures would be less visible. It will improve the appearance of the residential building and its compatibility with the neighboring area.

10. The second proposed modification is for a change of use of the accessory off-street parking spaces located in Square 1819 (the south site). The parking plan as originally approved limited parking on the south site to residents, guests, employees, visitors and customers of the residential units, offices and establishments on that site. The approved plan specified the number of parking spaces to be provided for office, retail, office/retail and residential use, where each type of parking use was permitted and specific time limits for the use.

- a. The applicant seeks a modification of the parking use only for those parking spaces located on the south site. The modification would allow shared parking for residential tenants, office tenants and retail employees for the majority of the surface parking spaces and all of the garage parking spaces in Square 1819.
- b. The proposed modifications do not affect the total number of parking spaces to be provided. The proposed modifications simply offer a mechanism for insuring that the spaces are used efficiently. By increasing the number of daytime visitor parking spaces from the number that was originally approved to a revised total of 53 and by maximizing the use of the parking spaces on the site through a shared-parking plan, the potential for overflow of parking onto the neighboring residential streets will be diminished and

the effects of the development on the surrounding neighborhood will be minimized.

- c. The parking plan, as originally approved, would require constant vigilance to ensure compliance. Furthermore, enforcement would likely necessitate the weekday towing of vehicles of residential guests in the early morning (or even during the day) from spaces requiring permits. The applicant is extremely concerned about the effect of this type of towing on community relations. The applicant proposes to better regulate the use of the surface lots by moving the mechanical arm or parking semaphore closer to 38th Street. The mechanical arm or semaphore would be operated by a card or a token.
- d. In its efforts to ensure that as many cars as possible are parked on the site, the applicant has stated to the McLean Gardens Condominium Association that, if the request for modification is approved by the Commission, the applicant will set the future parking rates for the garage and reserved surface spaces at levels that would not be so high as to encourage vacancies. The applicant has agreed to lower the future rates for reserved parking if there should be substantial parking vacancies. The applicant has agreed that for so long as all units in the 9-story residential structure are operated as rental units by the original developer (VMG Associates), the aggregate rent for the reserved parking spaces for the occupants of rental units in Square 1819 shall not be greater than 5 percent of the aggregate rent received for all the residential units on the south site.

- 11. The third modification the applicant proposes involves the placement of trash receptacles on the site. The plans previously approved do not show exterior trash receptacles available for the completed 360 residential units on the subject site. At present there are four trash rooms located on the property available to all 360 units. In response to concerns raised by several neighborhood residents regarding potential trash problems, the applicant requests permission to place between three and six trash containers on the site for the tenants residing in the four-story townhouse buildings if the building

management of the project deems that they are necessary.

- a. Any permanent trash containers would be located and screened so as to remain out of view from the surrounding public streets. Any landscaping used to screen the trash containers will be maintained in a healthy growing condition and in a neat and orderly appearance. In addition, the applicant testified at the public hearing that if the receptacles have an open side that such opening will face the closest residential building. Since the containers may change, the applicant requested the flexibility to move the containers if necessary. In determining the location of the trash containers on the site, the building management would consider both the actual needs within the site and the access requirements for the trucks servicing the containers. The containers would not replace any accessory off-street parking spaces on site. Additionally, one roll off dumpster may be used during the holiday season for special needs generated during that time.
- b. The proposed trash container modification will enhance the site by helping to keep it clean. The concerns of certain neighborhood residents are similar to those of the building management and, therefore, the trash container modification will permit future flexibility to ensure that the site is kept free of debris.

12. The requested modifications are fully consistent with the spirit and intent of the PUD order. The modifications will be in accordance with the spirit and intent of the previous order because the roof structure modification will improve the appearance of the residential area and its compatibility with the neighboring area, the parking use modification will further the objective of providing parking on-site for cars generated by the new development rather than exacerbating parking conditions on nearby residential streets, and the trash container modification will improve the appearance of the site.

13. The District of Columbia Office of Planning (OP), by memorandum dated June 15, 1987 and by testimony

presented at the public hearing, stated that "the proposed parking modifications and trash receptacles would not have a negative impact on the previously approved PUD, and OP recommends approval. However, the elimination of the proposed connecting wall between the cooling and mechanical tower and Stair No. 1 would have a negative visual impact on the overall appearance of the project. OP recommends denial of this portion of the proposed modifications."

14. The District of Columbia Department of Public Works (DPW), by memorandum dated June 5, 1987, had no objection to the proposed modification. Department of Public Works stated that, "The proposed modification would reduce the number of unused parking spaces and enable more people to park on-site rather than on the residential neighborhood streets; a benefit to the community at large."
15. Advisory Neighborhood Commission (ANC) 3C, by resolution dated May 25, 1987 and by testimony presented at the public hearing, stated that it did not oppose the proposed modifications provided that the new parking arrangement will not limit each resident's access to a parking space and that the new parking arrangement will be affordable to residents. The ANC additionally testified that it had reached an agreement with the applicant regarding the possible violations of the approved PUD which it referenced in its resolution.
16. The McLean Gardens Condominium Unit Owners Association, by letter dated April 23, 1987, supported the application. The condominium association voted unanimously to approve all three proposed modifications.
17. There were no other persons in support or in opposition of the application.
18. The Commission concurs with the recommendation of the OP, except for the connecting wall issue. The Commission further concurs with the position of the Department of Public Works. The Commission finds that the elimination of the connecting wall is reasonable and does not pose any adverse affects.
19. The Commission finds the proposed modifications to be appropriate for the site.

20. As to the concern of the ANC 3C regarding access to and the affordability of parking spaces for the residents tenants, the Commission finds that the applicant's proposal that addresses these matters is reasonable.
21. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated July 30, 1987, indicated that the modifications to the PUD would not adversely affect the Federal establishment of the Federal interests in the the National Capital nor be inconsistent with the Comprehensive Plan for the National Capitol.

#### CONCLUSIONS OF LAW

1. The subject application is property processed as a modification to the previously approved PUD.
2. The Planned Unit Development process is an appropriate means of controlling development of the subject site, since control of the use and site plan is essential to insure compatibilty with the neighborhood.
3. The development of this PUD carries out the purpose of to 11 DCMR 2400 to encourage the development of a well-planned development which will offer more attractive and efficient overall planning and design without sacrificing creative and imaginative planning.
4. Approval of the application would be consistent with the purposes of the Zoning Act (Act of June 20, 1938, 52 Stat. 797) by furthering the general public welfare and serving to stabilize and improve the area.
5. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capitol.
6. The proposed application can be approved with conditions which insure that development would not have an adverse affect on the surrounding community.

7. The approval of the application would promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Maps of the District of Columbia.
8. The Zoning Commission has accorded Advisory Neighborhood Commission 3C the "great weight" to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the District of Columbia Zoning Commission hereby orders that the modifications to the PUD is approved and that Z.C. Order No. 421 be amended as follows:

1. Add a new Condition No. 22 to read as follows:
  22. "The roof structure plans may be modified to eliminate the screen wall connecting Stair No. 1 and the cooling-elevator tower in accordance with the plans submitted as Exhibit No. 32B of the record in Case No. 87-17M/83-13C". (Revised Exhibit E-1, E2 and E3 of the applicant's prehearing statement).
2. The last sentence of Condition No. 8 shall be amended so as to delete the reference to "Sheet 6 of Exhibit No. 72B", and to substitute therefore "the plan marked as Exhibit No. 32B of the record in Case No. 87-17M/83-13C". (Revised Exhibit No. G of the applicant's prehearing statement).
3. Add two new conditions in connection with parking use on the south site, as follows:
  23. "Every apartment lease or condominium deed for the residential units in Square 1819 will contain a clause which permits the occupants of each residential unit at any time during the lease or ownership of that unit, the right to use, lease or purchase, at the option of the applicant, a parking space on the subject site. In addition, for so long as all units in the 9-story residential structure are operated as rental units by the original developer (VMG Associates), the aggregate rent for the reserved parking space

for the occupants of rental units in Square 1819 shall not be greater than 5 percent of the aggregate rent received for all the residential units on the south site".

24. "The 53 surface parking spaces closest to 38th and Newark Streets as shown on the plan marked as Exhibit No. 32B of the record in Case No. 87-17M/83-13C (Revised Exhibit G of the applicant's prehearing statement) will be reserved for visitors and patrons to the residential, office and retail uses of the project free of charge. A mechanical arm will be constructed to restrict access to all other surface spaces. The restricted spaces, together with all garage spaces, will be leased on a non-exclusive, shared basis".

4. Add a new condition in connection with the trash receptacles as follows:

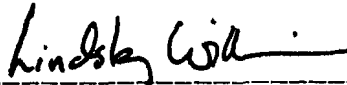
"Three to six exterior trash receptacles may be located on the property if the building management deems such receptacles necessary. The location of these receptacles will be determined by the building management based on actual needs within the site and the requirements of the trucks servicing the containers. The applicant will work with the McLean Gardens Condominium Unit Owners Association in connection with the location of the receptacles. The receptacles shall not replace any accessory, off-street parking spaces on site and permanent receptacles will be located and screened so as to remain out of view from surrounding public streets. Additionally, one roll off dumpster may be used during the holiday season for special needs generated during that time".

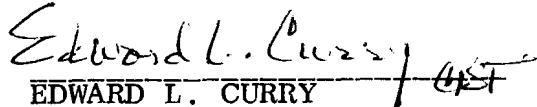
Vote of the Commission taken at the public hearing on June 22, 1987: 3-0 (Patricia N. Mathews, John G. Parsons, and Lindsley Williams to approve with condition - George M. White and Maybelle T. Bennett, not present, not voting).

This order was adopted by the Zoning Commission at its regular public meeting on August 3, 1987 by a vote of 3-0: (Patricia N. Mathews, John G. Parsons and Lindsley Williams, to adopt as corrected - George M. White and Maybelle T. Bennett, not voting not having participated in the case).

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In accordance with Title 11 DCMR, Section 3028, this order  
is final and effective upon publication in the D.C.  
Register; that is on 28 AUG 1987

  
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LINDSLEY WILLIAMS  
Chairman  
Zoning Commission

  
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EDWARD L. CURRY  
Acting Executive Director  
Zoning Secretariat

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